

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

UYEN NGUYEN)	
Claimant)	
VS.)	
)	Docket Nos. 241,451 & 251,406
NATIONAL BEEF PACKING COMPANY, L.P.)	
Respondent)	
AND)	
)	
WAUSAU INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Claimant appealed the July 9, 2001 Decision entered by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on December 14, 2001.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Decision.

ISSUES

Docket #241,451 was filed as a claim for a November 5, 1997 accident in which claimant allegedly injured both shoulders and his neck. Docket #251,406 was filed as a claim for a repetitive trauma injury to the chest that began on January 17, 2000, and continued each working day after that date. But the parties stipulated the appropriate date of accident for both docketed claims is November 5, 1997, and these claims should be decided as one award.

In the July 9, 2001 Decision, Judge Fuller determined that claimant sustained permanent functional impairment to both shoulders as a result of his work activities and,

therefore, awarded claimant an eight percent permanent partial general disability. The Judge based claimant's permanent partial general disability upon the whole body functional impairment opinions provided by Dr. Terrence Pratt, whom the parties selected as a neutral physician to evaluate claimant.

Claimant contends Judge Fuller erred. Claimant argues that his whole body functional impairment is 21 percent as determined by his medical expert witness, Dr. Pedro A. Murati. Accordingly, claimant requests the Board to increase his permanent partial general disability to 21 percent.

Conversely, respondent and its insurance carrier contend the Decision should be affirmed. They argue Dr. Pratt's opinion is the most accurate and that it is supported by the functional impairment opinions provided by Dr. Robert L. Eyster, Dr. Guillermo Garcia, and Dr. C. Reiff Brown.

The only issue before the Board on this appeal is what functional impairment has claimant sustained as the result of his employment with respondent in these two docketed claims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and after considering the parties' arguments, the Board finds and concludes:

1. The Decision should be affirmed.
2. Claimant was injured at work on November 5, 1997, when a bag of ribs fell and hit him on the right shoulder. Claimant immediately sought treatment at respondent's nursing station. While continuing to work, claimant then developed symptoms around his neck and left shoulder. As indicated above, the parties stipulated the appropriate date of accident for both docketed claims is November 5, 1997.
3. Several weeks after the November 1997 accident, claimant began receiving treatment from orthopedic surgeon Dr. C. Reiff Brown, who prescribed injections for the right shoulder area. In July 1998, Dr. Brown determined claimant had a six percent functional impairment to the right upper extremity and a three percent impairment to the left upper extremity, which comprised a seven percent whole body functional impairment. Those ratings were based on the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides).
4. In October 1998, claimant saw Dr. Guillermo Garcia to obtain a second medical opinion. Dr. Garcia diagnosed bilateral rotator cuff tendinitis and rated claimant as having the same percentages of functional impairment that Dr. Brown found. Dr. Garcia found that claimant had normal range of motion in his neck. In his October 15, 1998 office notes,

which the parties stipulated into evidence, Dr. Garcia did not indicate whether he used the *AMA Guides* in determining claimant's functional impairment.

5. On an undisclosed date, claimant consulted Dr. Robert L. Eyster, who also prescribed injections. In an undated medical note that the parties stipulated into evidence and represented as being dated March 2000, Dr. Eyster indicated claimant had full range of motion in his shoulders. The doctor also noted claimant had neither shoulder crepitation nor impingement. In that same medical note, Dr. Eyster rated claimant as having a two percent whole body functional impairment due to his neck and a two percent whole body functional impairment due to his bilateral shoulder problems, both of which comprised a four and one-half percent to five percent whole body functional impairment. The doctor did not indicate whether those ratings were based upon the *AMA Guides*.

6. Claimant's attorney hired Dr. Pedro A. Murati to evaluate claimant for purposes of these claims. Dr. Murati saw claimant on two occasions – March 24, 1999, and October 10, 2000. At the first examination, claimant complained of pain in both shoulders, lower neck pain and pain between the shoulder blades. The doctor diagnosed probable rotator cuff tears and myofascial pain syndrome affecting the neck and shoulder girdles. At the second examination, claimant complained of pain in both shoulders and between the shoulder blades. At that examination, Dr. Murati again diagnosed probable rotator cuff tears and myofascial pain syndrome, but the doctor also added bilateral carpal tunnel syndrome that was not at maximum medical improvement.

Following the second examination, Dr. Murati used the *AMA Guides* and determined that claimant had a two percent whole body functional impairment due to mild to moderate crepitus in the right shoulder, an 11 percent whole body functional impairment due to severe crepitus in the left shoulder, a four percent whole body impairment for myofascial pain syndrome affecting the neck, and a six percent whole body impairment for the loss of range of motion in the cervical spine. According to Dr. Murati, as of October 2000 claimant had a 21 percent whole body functional impairment.

7. The parties selected Dr. Terrence Pratt of Kansas City, Missouri, to evaluate claimant as a neutral physician. The doctor saw claimant in January 2001 and diagnosed cervical and periscapular syndrome, as well as bilateral shoulder syndrome with impingement. Using the *AMA Guides*, the doctor determined each of claimant's upper extremities created a four percent whole body functional impairment, both of which combined for an eight percent whole body functional impairment.

Dr. Pratt did not give claimant an impairment rating for myofascial pain syndrome as claimant did not meet the criteria for that diagnosis because the doctor failed to find trigger points. The doctor also did not find that claimant's neck condition created any functional impairment under the *AMA Guides*. Although the doctor observed less than full range of motion in claimant's cervical spine, Dr. Pratt did not attempt to rate the neck on that basis as his observations were markedly different from those noted by other

physicians who had examined claimant's neck. In short, the doctor felt claimant's neck condition fell within the AMA *Guides'* category 1 of the DRE (Diagnosis-Related Estimates) for cervical thoracic involvement, which created a zero percent impairment.

8. The Board affirms the Judge's finding that claimant has sustained an eight percent whole body functional impairment. That rating is based upon the opinion of Dr. Pratt, who was brought into this proceeding as an unbiased expert. Dr. Pratt explained the findings from examining claimant and how he formulated the functional impairment rating. When considering the entire record, Dr. Pratt's testimony is convincing and persuasive.

AWARD

WHEREFORE, the Board affirms the July 9, 2001 Decision entered by Judge Fuller.

IT IS SO ORDERED.

Dated this ____ day of December 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director